Tan Kwang Joo v Public Prosecutor

HIGH COURT (SINGAPORE) – MAGISTRATE'S APPEAL NOS 236 AND 264 OF 1988
RAJAH J
21 APRIL 1989

Criminal Law – Corruption – Meaning of 'corrupt' – Proof of intention – Punishment of penalty in addition to fine – Whether penalty can be imposed where accused did not receive gratification – Prevention of Corruption Act (Cap 241, 1985 Ed), ss 6(a) & 13(1)

Words and Phrases – 'Corrupt' – Prevention of Corruption Act (Cap 241, 1985 Ed), s 6(a)

The appellant was tried and convicted in the subordinate courts on a charge of corruptly obtaining a gratification for company SLCC. He was sentenced to a fine of $5,000 and in default, five months' imprisonment. A penalty of $226,027.41 was also imposed and in default, 12 months' imprisonment. The appellant paid the fine and was on bail. The payment of the penalty was stayed pending the outcome of the present appeal. The appellant appealed against the conviction and the imposition of the penalty.

Held, dismissing the appeal on conviction but setting aside the penalty imposed on the appellant:

(1) The Malaysian case of *PP* v *Datuk Haji Harun bin Haji Idris (No 2)*[1] was the leading case on the Prevention of Corruption Act as the relevant provisions of the Malaysian Act are in pari materia with the local sections, in so far as the particular sections with which the appeal is concerned.

(2) 'Corrupt' means doing an act knowing that the act is wrong, doing it with evil feeling and evil intentions. 'Corrupt' is a question of intention. If the circumstances show that what a person has done or has omitted to do was moved by an evil intention or a guilty mind, then he is liable under the section. Thus if the accused used his position to solicit gratification with a guilty mind, he is caught within the relevant section.

(3) The appellant had, in breach of his instructions by his employer, failed to report to the architect on site that the subcontractor was his brother-in-law is a relevant consideration in determining the question of corrupt intention.

(4) The court agreed with the trial judge as regards the guilt and conviction of the appellant. The appeal in this regard was therefore dismissed.

(5) Section 13(1) was intended to prevent corrupt wrongdoers from keeping or benefitting from the spoils of their crimes. The legislature could not have intended that an accused be called upon to pay a penalty in respect of a sum which he clearly did not receive, accept, or obtain for himself. The trial judge's order in respect of the penalty was thus set aside.

Cases referred to

1 *PP* v *Datuk Haji Harun bin Haji Idris (No 2)* [1977] 1 MLJ 15 (folld)
2 *Lim Kheng Kooi* v *R* [1957] MLJ 199 (refd)
3 *R* v *Smith* [1960] 1 All ER 256 (refd)

Legislation referred to

Prevention of Corruption Act (Cap 241, 1985 Ed) ss 6(a), 13(1)

B Ganesh for the appellant.
Lee Seiu Kin (Deputy Public Prosecutor) for the respondent.

Cur Adv Vult

Rajah J: The appellant was tried in the subordinate courts on the following charge:

> You, Tan Kwang Joo, are charged that you on a day in May or June 1986 in Singapore, being an agent, namely, a clerk-of-works in the employ of the Housing and Development Board, did corruptly obtain a gratification, to wit, a tiling work subcontract at Bukit Timah Contract I valued at $226,027.41 from Sim Lian Construction Co (Pte) Ltd for Star-Tile General Contractor as an inducement to refrain from showing disfavour, in relation to your principal's affairs, to wit, by not causing unnecessary difficulties in your supervision of the construction of five blocks of flats under Bukit Timah Contract I undertaken by Sim Lian Construction Co (Pte) Ltd and you have thereby committed an offence punishable under s 6(a) of the Prevention of Corruption Act (Cap 104).

At the conclusion of the hearing on 8 July 1988, the learned district judge convicted the appellant and on 23 July 1988 sentenced him to a fine of $5,000 and in default thereof five months' imprisonment. He also imposed a penalty of $226,027.41 to be paid to the State within one month from 23 July 1988 and in default thereof 12 months' imprisonment. The appellant has been on bail and the fine of $5,000 on the conviction has been paid. The payment of the penalty of $226,027.41 has been stayed pending the outcome of this appeal pursuant to an order of the then learned Judicial Commissioner Mr Chan Sek Keong in the High Court. The appellant being dissatisfied with the conviction and the imposition of the said penalty has appealed against them.

I have considered very carefully the arguments and submissions of learned counsel for the appellant and in considering them I have relied largely for guidance on the case of the *PP* v *Datuk Haji Harun bin Haji Idris (No 2)*[1] in which the accused was charged with three charges of corruption and in which it was alleged that he as Mentri Besar, Selangor, (a) solicited the sum of $250,000 for UMNO as an inducement to obtain the approval of the Executive Council in respect of an application for a piece of State land; (b) being a member of a public body accepted on or about 16 August 1972 for UMNO the sum of $25,000 as an inducement to obtain such approval; (c) accepted for UMNO on or about 27 March 1973 the sum of $225,000 as an inducement to obtain such approval. I consider this the leading case on the Prevention of Corruption Act, the relevant provisions of which are in pari materia with ours, in so far as the particular sections with which we are concerned in the appeal. Raja Azlan Shah J (as he then was) in his judgment said that in order to establish a charge under the section the prosecution must prove (1) that the accused is a member of the government of the State of Selangor; (2) that on or between the dates mentioned in the charge he solicited for UMNO a gratification of $250,000; (3) that the circumstances in which the gratification was solicited give rise beyond reasonable doubt to an inference that it was solicited corruptly and (4) that the accused solicited the gratification as an inducement to obtain approval of the Executive

Council in respect of the bank's application. Under the third requirement, namely, that the circumstances in which gratification was solicited give rise to the inference that it was solicited corruptly, he, on the question of what is corrupt, said:

> 'corrupt' means 'doing an act knowing that the act done is wrong, doing so with evil feelings and evil intentions' (see *Kheng Kooi* v *R*[2]); 'purposely doing an act which the law forbids' (see *R* v *Smith*[3]). 'Corrupt' is a question of intention. If the circumstances show that what a person has done or has omitted to do was moved by an evil intention or a guilty mind, then he is liable under the section. Thus if the accused used his position to solicit gratification with a guilty mind, he is caught within the ambit of the section. The real point is whether there is soliciting a political donation with a corrupt intention.

In our case the fact that the appellant, in breach of his instructions by his employer, the Housing and Development Board, failed to report to the architect on the site that the subcontractor was his brother-in-law is a relevant consideration in the determination of corrupt intention. I find myself in agreement with what the learned trial judge has said in regard to the guilt and conviction of the appellant; the appeal in this regard is therefore dismissed.

This is an appeal both on conviction and the penalty imposed on the appellant under s 13(1) of the Act. On the matter of the penalty I am at variance with the learned trial judge's views on the said section. In my view the section unequivocally and clearly concerns itself only with the situation 'where a court convicts any person of an offence committed by the acceptance of any gratification in contravention of any provision of this Act'. Here the appellant was convicted of obtaining a gratification for Star-Tile General Contractor. It is not in dispute that the appellant personally did not receive the said sum of $226,027.41 or any part of it. This section in my view was intended to prevent corrupt wrong-doers from keeping or benefitting from the spoils of their crimes. I cannot imagine that the legislature ever intended that in similar circumstances such as these, a convicted accused had to be called upon to pay a penalty in respect of a sum which he himself clearly did not receive, accept or obtain for himself. The trial judge's order in respect of the penalty is set aside and the appeal on the penalty imposed is allowed.

Order accordingly.

Solicitors: *Lim, Ganesh & Liu.*

Reported by *Terence Tan Bian Chye*

Chua Chwee Thiam v Annie Lim

HIGH COURT (SINGAPORE) – DIVORCE NO 139 OF 1981
CHAN SEK KEONG J
13 APRIL 1989

Family Law – Divorce – Agreement setting out financial arrangements in divorce proceedings – Application to court to vary agreement – Whether sufficient material to show adverse change in financial circumstances – Suspension of agreement

The petitioner and the respondent had made an agreement ('the agreement') dated 20 March 1982 setting out the financial arrangements between them in the divorce proceedings. On 4 June 1987, the petitioner made an application to revoke the agreement. Under cl 1 of the agreement, the petitioner agreed to (and did) pay a capital sum of $150,000 in instalments to the respondent and their daughter. Under cl 2 of the agreement, the petitioner agreed to pay the respondent until she remarries, and their daughter until she marries, monthly sums of $3,500 and $1,500 respectively, tax free, as well as other sums in respect of medical expenses, food, monthly instalments for a car, life insurance policy premiums, and the respondent's legal fees in connection with the divorce proceedings. Under cl 5 of the agreement, the respondent agreed to support their daughter and to educate her. The petitioner's application was based on the ground that he was 'financially stretched'. He alleged that at the time he signed the agreement, his business was doing well but, at present, his company was in dire financial straits. The petitioner's affidavit itemized his total indebtedness. He also produced evidence that his three credit cards were cancelled and that he was unable to pay his tax arrears. His company was placed in receivership.

Held, allowing the application:

(1) The petitioner has produced enough evidence to show that there has been a material adverse change in his financial circumstance at the date of his petition.

(2) On the other hand, the respondent is well-off. In addition to the 60% of the lump sum of $150,000 received by her, she owns property at Grange Heights and Holland Road. She drives a Mercedes Benz and has also retained $8,000 from the sale of a BMW which she had been using earlier.

(3) Clause 2 of the agreement should be suspended with effect from June 1987 except for cl 2(d) which is to be varied by reducing the maintenance therein to $500 pm. Each party was to pay his or her own costs. Liberty to apply was also given.

KY Choy for the petitioner.
Lee Han Tiong for the respondent.

Cur Adv Vult

Chan Sek Keong J: This is an application made on 4 June 1987 by the petitioner to revoke an agreement dated 20 March 1982 ('the agreement') entered into between the petitioner and the respondent setting out the financial arrangements between them in the divorce proceedings. Under cl 1 of the agreement, the petitioner agreed to (and did) pay a capital sum of $150,000 in instalments to the respondent (60%) and their daughter (40%) who was born on 28 December 1965. Under cl 2 of the agreement, the petitioner agreed to pay the respondent until she remarries, and the daughter until she marries, the following: